



475 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-620-SB-2007
Date of decision: 17.03.2025

BALWINDER SINGH @ KALA KATTA AND ANR.
.....Appellants
Versus

STATE OF PUNJAB.Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Shivaly Singla, Advocate
for the appellants. (amicus curiae).

Mr. Rishabh Singla, AAG, Punjab.

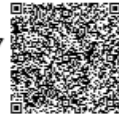
HARPREET SINGH BRAR, J. (ORAL)

1. This appeal has been preferred against the judgment of conviction and order on quantum of sentence dated 15.03.2007 passed by learned Judge, Special Court Amritsar whereby, the appellants were convicted and sentenced for the offences punishable under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter ‘NDPS Act’), in the case stemming from FIR No.63 dated 02.08.2005 Police Station, D-Division, Amritsar under Sections 22/61/85 of NDPS Act.

2. The appellants were sentenced as mentioned below:

Offence	Sentence
Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of 6 months each and to pay fine of Rs.200/- each and in default of payment of fine, to further undergo rigorous imprisonment for 15 days each.

3. Brief facts of the case are that on 02.08.2005 ASI Ashwani Kumar alongwith fellow police officials had raised Nakabandi near Punjab Roadways Workshop Amritsar where both the accused came on Bajaj chetak Scooter

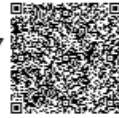


bearing Registration No.PB-02-Y-3418 from the side of Railway Station, Parshuram Chowk. Balwinder Singh accused was driving the scooter whereas Jasbir Kaur was sitting on the pillion. They were stopped and their identity was verified. ASI Ashwani Kumar asked Balwinder Singh accused to show the documents pertaining to the scooter whereupon he opened the diggy of the scooter and took out a polythene envelope and handed over the same to Jasbir Kaur who quickly threw away the same on the ground. On suspicion the said polythene envelope was checked and smack was found therein. Total 20 gms smack was recovered. Hence the FIR (supra) was registered.

4. Learned counsel for the appellant inter alia contends that no one was joined at the time of recovery and there is delay of 9 days in sending the representative parcel to the chemical examiner beyond the stipulated time as such, there are many discrepancies in the case set up by the prosecution and the learned Trial Court failed to appreciate the evidence which has come on record while convicting the appellant. He further contends the appellants have undergone a period of 1 month and 27 days (Balwinder Singh) and 1 month and 23 days (Jasbir Kaur) in custody.

5. *Per contra*, learned State counsel opposes the prayer of the appellants as the learned Court below has passed a well-reasoned judgment based on correct appreciation of evidence available on record as such, they do not deserve any leniency.

6. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that the appellants were convicted for having in possession 20 grams of smack attracting the offence under Section 21 of NDPS Act, for which no minimum punishment has been prescribed. As per their custody certificates appellant No.1 -Balwinder Singh



has undergone actual sentence of 1 month and 27 days and appellant No.2 Jasbir Kaur has undergone actual sentence of 1 month and 23 days. Since there is no minimum punishment prescribed under Section 21 of NDPS Act, this Court is of the opinion that it would be in the interest of justice, if the sentence awarded to the appellants are reduced to the period already undergone by them.

7. In *Deo Narain Mandal vs. State of U.P. (2004) 7 SCC 257*, the Hon'ble Supreme Court has opined that awarding of sentence is not a mere formality in criminal cases. When a minimum and maximum term is prescribed by the statute with regard to the period of sentence, a discretionary element is vested in the Court. Background of each case, which includes factors like gravity of the offence, manner in which the offence is committed, age of the accused, should be considered while determining the quantum of sentence and this discretion is not to be used arbitrarily or whimsically. After assessing all relevant factors, proper sentence should be awarded bearing in mind the principle of proportionality to ensure the sentence is neither excessively harsh nor does it come across as lenient.

8. Further, the Hon'ble Supreme Court in *Ravada Sasikala vs. State of AP AIR 2017 SC 1166*, has reiterated that the imposition of sentence also serves a social purpose as it acts as a deterrent by making the accused realise the damage caused not only to the victim but also to the society at large. The law in this regard is well settled that opportunities of reformation must be granted and such discretion is to be exercised by evaluating all attending circumstances of each case by noticing the nature of the crime, the manner in which the crime was committed and the conduct of the accused to strike a balance between the efficacy of law and the chances of reformation of the accused.



9. A perusal of the judgment of conviction passed by the learned trial Court indicates no perversity in its findings and the same is based on correct appreciation of evidence available on record. However, the FIR (supra) was lodged on 02.08.2005 and the appellants have been suffering the agony of trial for last more than 19 years. Since their conviction, they have grown into a law-abiding citizen and desires to live a peaceful life.

10. Therefore, in view of the discussion above, the present appeal is disposed of in the following terms:-

(i) The judgment dated 15.03.2007 passed by learned Judge, Special Court, Amritsar is upheld.

(ii) The order of sentence dated 15.03.2007 is modified to the extent that the sentence of rigorous imprisonment for 6 months each awarded to the appellants are reduced to the period of sentence already undergone by them.

(iii) Fine of Rs. 200/- imposed upon the appellants shall remain intact. The appellants are directed to deposit the amount fine in the trial Court within one month from the date of receipt of certified copy of this order and in case of default of payment of fine, the appellants shall be liable to be taken into custody and made to undergo simple imprisonment for one week.

11. Pending miscellaneous application(s), if any, shall also stand disposed of.

12. High Court Legal Services Committee is directed to pay remuneration to learned *amicus curiae* for the appellants as per rules.

(HARPREET SINGH BRAR)
JUDGE

17.03.2025

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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No